No. 166

IN THE

Supreme Court of the United States

October Term, 1961

INTERLAKE STEAMSHIP COMPANY, a corporation, and PICKANDS-MATHER & Co., a co-partnership,

Respondents

v.

MARINE ENGINEERS BENEFICIAL ASSOCIATION, CHARLES LAPORTE, FRED L. BEATTY, JOHN DOE, RICHARD ROE, and MARINE ENGINEERS BENEFICIAL ASSOCIATION, LOCAL 101,

Petitioners

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

BRIEF FOR THE PETITIONER

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Opinions Below

The Memorandum of the District Court of St. Louis County, State of Minnesota (R. 17 *ff.*) is unreported. The Opinion of the Supreme Court of Minnesota (R. 45 *ff.*) is reported at 108 N.W.2d 627 (1961).

Jurisdiction

On March 30, 1961, the Supreme Court of Minnesota affirmed the issuance of an injunctive decree against picketing activity which was arguably and reasonably within the prohibitions of Section 8 of the National Labor Relations Act. 61 Stat. 141, 29 U.S.C. Section 158(b). (Appendix 22). Over such activity the National Labor

Relations Board has been invested with exclusive jurisdiction by 61 Stat. 146, 29 U.S.C. Section 160. Pursuant to 62 Stat. 929, 28 U.S.C. Sec. 1257 (3), the petitioner Marine Engineers Beneficial Association sought a writ of certiorari to the Supreme Court of Minnesota, which was granted on October 9, 1961. Petitioner now files this brief on the merits.

Statutory Provisions Involved

The statutory provisions involved in this case are Sections 2(3), 2(5), 2(11), 8(a)(3), 8(b)(2), 8(b)(4)(A) and (B) and 14(a) of the National Labor Relations Act, as amended, 61 Stat. 137, 138 140, 141, 151; 29 U.S.C. Sec. 152(3), Sec. 152(5), Sec. 152(11), Sec. 158a(3), Sec. 158(b)(2), Sec. 158(b)(4)(A) and (B) and Sec. 164.[1] These statutory provisions are set forth in the Appendix to this brief.

Question Presented

Was it not error for the state court to enjoin picketing by a union composed primarily of supervisors when such activity arguably or reasonably fell within the purview of Section 8(b) of the National Labor Relations Act and, therefore, within the exclusive jurisdicition of the National Labor Relations Board?

Statement of the Case

Respondent Interlake Steamship Company (hereinafter called "Interlake") is the owner, and respondent Pickands-Mather & Co. (hereinafter called "P-M") is the operator, of the second largest fleet of bulk cargo ships operating on the Great Lakes (R. 46). The petitioner is the Marine Engineers Beneficial Association, hereinafter called "MEBA"), its Local 101, and agents thereof. MEBA

[1] This statute is frequently referred to in this brief simply as the Act.

is a voluntary unincorporated association which admits to membership, represents and collectively bargains for licensed marine engineers employed on approximately forty to forty-five per cent of the merchant fleet operating on the Great Lakes and approximately ninety per cent of the vessels of the entire United States merchant fleet (R. 24). The MEBA did not have a collective bargaining agreement with either of the respondents, although it claimed some of their engineers as members (R. 48).

On the afternoon of November 11, 1959, Interlake's steamer Samuel Mather arrived with a cargo of coal at the Duluth, Minnesota dock of the Carnegie Dock and Fuel Company (hereinafter called "Carnegie"), and the Carnegie employees began to unload it (R. 46).

About 6:30 A.M. on November 12, 1959, MEBA stationed pickets across the only entrance road to the Carnegie dock. The pickets carried signs with the following legends:

> "PICKANDS MATHER UNFAIR TO ORGANIZED LABOR. THIS DISPUTE INVOLVES ONLY P-M. MEBA LOCAL 101, AFL-CIO."
>
> or
>
> "MEBA LOC. 101 AFL-CIO REQUEST P-M ENGINEERS TO JOIN WITH ORGANIZED LABOR TO BETTER WORKING CONDITIONS. THIS DISPUTE ONLY INVOLVES P-M." (R. 9, 10, 46, 47)

None of the pickets was an employee of Interlake or P-M or Carnegie. From the time the picketing began, the Carnegie employees refused to proceed with the unloading of the ship, and for a brief period independent truck drivers refused to cross the picket line to take delivery of coal from Carnegie (R. 10, 47).

On the night of November 12, 1959, MEBA also stationed pickets, carrying signs bearing the legends quoted above, at the entrance to the Duluth plant of the Interlake Iron Corporation, where coal was being unloaded from

another Interlake ship. None of the employees of Interlake Iron (or of either respondent) was on this picket line (R. 11, 47).

Picketing at both locations, which was at all times peaceful, was halted on November 12, 1959, by temporary restraining order of the District Court of St. Louis County (R. 47).

Subsequent to the serving of the temporary restraining order, the District Court of St. Louis County held a hearing on this matter. The trial court found that while MEBA Local 101 did not claim to represent a majority of the licensed engineers employed by respondents, it had engaged in picketing activity in order to coerce respondents to recognize MEBA Local 101 as collective bargaining agent for the licensed engineers employed on Interlake vessels, to force Interlake engineers to become members of MEBA Local 101 and to obtain a union shop agreement, in violation of certain statutes and the public policy of the State of Minnesota (R. 20-22). To the objection of MEBA that the state courts lacked jurisdicition over the subject matter of this action, because it involved activities within the scope of the National Labor Relations Act and within the exclusive jurisdiction of the National Labor Relations Board, the trial court replied that MEBA could not be deemed a labor organization, and it was seeking in the instant case to organize licensed engineers who were supervisory employees (R. 18-19) and, therefore, were excluded from the coverage of the federal statute and not within the jurisdiction of the National Labor Relations Board. Accordingly, the trial court granted a restraining order on November 18, 1959, and a temporary injunction on December 1, 1959 (R. 15-17, 48). On March 28, 1960, after final hearing, it issued a permanent injunction (R. 41, 42, 48). This decree was affirmed on March 30, 1961, by the Supreme Court of Minnesota, which again ruled against MEBA on the jurisdictional issue (R. 48-51).

Summary of Argument

We propose in the argument to review briefly the principles laid down by this Court in *Garner v. Teamsters Union*, 346 U. S. 485 (1953); *Weber v. Anheuser-Busch*, 348 U. S. 468 (1955); *San Diego Council v. Garmon*, 359 U. S. 236 (1959), and a number of other cases with respect to the preemption of jurisdiction of the state (and federal) courts in favor of the exclusive jurisdiction of the National Labor Relations Board in cases involving a clear, reasonable or arguable violation of Section 8(b) of the National Labor Relations Act.

The state courts in this case have presumed to exercise jurisdiction to enjoin picketing which arguably violated Section 8(b), in spite of the doctrine of preemption, because the picketing was engaged in by a union whose membership is composed primarily of supervisors and directed in the specific case to workers who may be held to be supervisors. The state courts reasoned that supervisors are excluded from the definition of "employees" in Section 2(3) of the Act, and hence the MEBA is not a "labor organization" as defined in Section 2(5) of the Act and, therefore, not within the purview of Section 8(b) of the Act (R. 18).

We propose to set forth the precedents on this question of whether MEBA is a "labor organization" within the meaning of Section 8(b) and to show that without opposition the National Labor Relations Board and the federal courts have held that it is such a "labor organization". We shall show that in the case of *National MEBA v. NLRB*, 274 F.2d 167 (2d Cir. 1960), the MEBA was held to be a "labor organization" within the meaning of Section 8(b) on the ground that nonsupervisors also participate in the affairs of the union. We shall show that in the case of *Schauffler v. Local 101, MEBA*, 180 F. Supp. 932 (E. D. Pa. 1960), MEBA was held to be a "labor organization" within the meaning of Section 8(b) on the ground that

it exists for the purpose of bargaining with employers about matters of employment.

We shall show that the cases relied upon by the state courts below were confined to the issue whether licensed marine engineers were supervisors and, as such, excluded from the Act. But such inquiry had no bearing on the question as to when a union may be deemed a "labor organization" for the purpose of Section 8(b) of the Act.

For these reasons we conclude that the picketing by MEBA in this case arguably and reasonably fell within the purview of Section 8(b). The doctrine of preemption fashioned by this Court in *Garner v. Teamsters Union, supra; Weber v. Anheuser-Busch, supra;* and *San Diego Council v. Garmon, supra,* is, therefore, fully applicable to the instant case and operates to divest the Minnesota state courts of jurisdiction in favor of the exclusive jurisdiction of the National Labor Relations Board.

Argument

I. In Affirming a State Court Injunction Against Picketing Whose Object Has Been Made An Unfair Labor Practice by a Federal Statute Which Invests a Federal Agency With Exclusive Jurisdiction to Pass on Such Conduct, the Decision of the Supreme Court of the State of Minnesota Conflicts With Recent Decisions of This Court.

Recent decisions of the United States Supreme Court have enunciated the doctrines of preemption which control the instant case. The decision of the Supreme Court of Minnesota was in plain derogation of those pronouncements. This Court has stated these principles:

> (1) A state court may not enjoin peaceful picketing whose object has been made an unfair labor practice under Section 8 of the National Labor Relations Act, which invests the National Labor Relations Board with exclusive jurisdiction to pass on such conduct.

Garner v. Teamsters Union, 346 U. S. 485 (1953);

(2) Even if an unfair labor practice is not clearly involved in such peaceful picketing, ". . . where the facts reasonably bring the controversy within the sections prohibiting these practices, . . . the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance." *Weber v. Anheuser-Busch*, 348 U. S. 468, 481 (1955);

(3) "When an activity is arguably subject to . . . Section 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." *San Diego Council v. Garmon*, 359 U. S. 236, 245 (1959).

Applying these criteria to the facts found by the trial court and adopted by the Minnesota Supreme Court, we can only conclude that the activity of the petitioner MEBA was at least "arguably subject to" or "reasonably within" two subsections of Section 8(b) of the National Labor Relations Act. The trial court found as facts, and the Minnesota Supreme Court specifically adopted its findings, that

"16. The further purpose and objective of defendants' picketing and activities as described above was to coerce and induce plaintiffs to force, compel or induce engineers employed on Interlake vessels to become members of MEBA Local 101 and was for the purpose of injuring plaintiffs in their business because of their refusal to in any way interfere with the rights of engineers employed on Interlake vessels to join or not to join said defendant organization.

"17. The further purpose and objective of defendants' picketing and activities as described above was to

coerce and intimidate plaintiffs in order to secure recognition from plaintiffs of MEBA Local 101 as the collective bargaining agent for the licensed engineers employed on Interlake vessels." (R. 12, 33, 52).

If these were the facts, then it followed from them that this conduct was "arguably subject to" or "reasonably within" the prohibition of Section 8(b)(2), which makes it an unfair labor practice for a "labor organization . . . to cause . . . an employer to discriminate against an employee in violation of sub-section (a)(3)," which in turn makes it an unfair labor practice for an employer to encourage membership in any labor organization.

The trial court found as facts, and the Minnesota Supreme Court adopted its findings, that:

"6. From the time of the commencement of this picketing, the employees of the Carnegie Dock & Fuel Company, although having entered the premises of their employer despite such picketing and having performed other duties of their employment, have failed and refused to perform any services whatsoever in connection with the unloading of the Samuel Mather although ordered to do so on numerous occasions.

"7. As a further result of such picketing, certain independent truck drivers failed and refused to enter the dock premises to take delivery of coal from the dock company and left their vehicles parked on the single road entrance . . . to the dock for approximately two hours on the morning of November 12, 1959.

* * * * *

"9. The picketing at the dock company premises continued until the service of the temporary restraining order issued by this Court in the afternoon of November 12, 1959. Despite the absence of formal picketing at the dock company's premises since that time, the

dock company employees have continued to refuse to unload the Samuel Mather." (R. 10, 30, 31, 47)

Again the findings of the state courts placed this conduct arguably or reasonably within the prohibition of the federal statute. Section 8(b)(4) of the Act outlaws the secondary boycott, that is, the inducement of the employees of a neutral employer, by picketing or otherwise, to engage in a strike or to refuse to perform services, where an object thereof is to force one person to cease doing business with another. The state court's findings that employees of Carnegie Dock and Fuel Company, a neutral employer, were induced by the picketing not to perform services for Interlake indicated a violation of Section 8(b)(4).

The state courts were not unaware of the aforementioned decisions of this Court, and, accordingly, they recognized that this case involves a problem in the law of preemption. Both the trial court and the Minnesota Supreme Court grappled with the problem to a limited extent, and both concluded (untenably as it turns out) that in this situation the doctrine of preemption does not apply. We shall point out the weakness in their position and show why the doctrine of preemption does operate in the instant case.

II. Even Though MEBA Was Primarily or Almost Exclusively Composed of Members Who Performed Certain Supervisory Functions, the MEBA Still "Arguably" and "Reasonably" Constituted a "Labor Organization" Which May Commit an Unfair Labor Practice Within the Meaning of Section 8(b) of the Act.

In the opinion of the trial court the record "is clear that its [MEBA] membership is composed primarily and almost exclusively of supervisors",[2] (R. 18) and it so found

[2] Section 2(11): "The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or dis-

(R. 11, 13, 32, 34). The Supreme Court of Minnesota accepted such findings (R. 50). In view of the exclusion of "supervisors" from the definition of "employee" in Section 2(3) of the Act,[3] the state courts leaped to the conclusion that as a union MEBA is thereby specifically excluded from Section 8(b) of the Act, which proscribes certain activities by labor organizations (R. 13-14, 34, 49-51).

The state courts seemed to be oblivious of the fact that the language of Section 8(b) does not speak of a "supervisor" or even of an "employee" but of a "labor organization or its agents:" "It shall be an unfair labor practice for a labor organization or its agents . . ." Thus, the real question in the instant case is not whether some or most of MEBA members should be classified as supervisors or as employees or sometimes as one and sometimes as the other, nor whether the marine engineers employed by Interlake were supervisors or not, but whether MEBA itself as an entity could arguably or reasonably be held to be a "labor organization" [4] for the purpose of Section 8(b).

The state courts also seemed to be unaware of, or unconcerned with, the fact that their reasoning in the instant case finds no support in the decisions of the National Labor Relations Board and other (federal) courts which have been faced with the same question of whether MEBA

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cipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

[3] Section 2(3): "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, . . . but shall not include . . . any individual employed as a supervisor. . . ."

[4] Section 2(5): "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

is a "labor organization" within the meaning of Section 8(b) of the National Labor Relations Act. As we shall demonstrate herein, the Labor Board and the other courts which have been faced with this question have held that MEBA is a "labor organization" subject to the prohibitions of Section 8(b). One decision of the National Labor Relations Board and one federal court case have been cited in support of the decision of the Minnesota courts. We shall presently demonstrate that neither of them is authority for the proposition that MEBA is not a "labor organization" subject to the prohibitions of Section 8(b) of the Act.

The first of the cases in which MEBA has been found to be a "labor organization" within the meaning of Section 8(b) of the National Labor Relations Act was *National MEBA v. NLRB*, 274 F.2d 167 (2d Cir. 1960), in which the court granted a petition for enforcement of a cease and desist order issued by the Labor Board against MEBA and other unions for violations of Sections 8(b)(4)(A) and (B) of the Act.

It is true that in that proceeding, being the first to involve the question, MEBA contended that it should not be held to be a "labor organization" within the prohibition of Section 8(b) of the Act, since the predominant number of its members were supervisors and the personnel who were being organized in the specific labor dispute were supervisors. However, this position was specifically rejected by the court.[5] The court upheld the Labor Board's interpretation that a union need only embrace two members who are "employees" as distinguished from "supervisors" to be a "labor organization", regardless of the status of its remaining members. The court also held the evidence sufficient to warrant the Board in finding that MEBA was a union which included employees as well as

[5] The argument was also rejected by the Labor Board which said: "We conclude that some of the engineers whom MEBA admits into membership are not supervisors and therefore that MEBA is a labor organization as defined in the Act." *National Maritime Union, et al.*, 121 NLRB 208, 210 (1958).

supervisors and, therefore, was a "labor organization" within the meaning of Section 8(b).

In determining whether MEBA was a "labor organization", Judge Friendly looked at the entire composition of the union, local and national, to see whether any employees participated in its membership. He noted (1) that the constitution of MEBA made eligible for membership marine engineers so broadly defined as to include persons not engaged in supervisory duties; (2) that in the case under decision the MEBA had sought to represent three engineers, two whose status was clearly supervisory and a third whose status was debatable; and (3) that in a prior case the MEBA had sought to represent two non-supervisory engineers: "an attempt by a union to act on behalf of non-supervisory workers tends to show that the union is one in which 'employees participate'. . . ." (274 F. 2d at 173.) [6]

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[6] There was also discussion in Judge Friendly's opinion as to the effect of an admission by MEBA that it was a "labor organization" in a previous case before the Labor Board. Judge Friendly concluded that neither the admission nor the decision based upon it were binding in the determination of a subsequent case. We point this out because there is in the record of the instant case (R. 43) an affidavit of Herbert L. Daggett, dated October 9, 1957, over two years prior to the events of the instant case, which was taken in connection with the litigation of another case. The trial court refers to this affidavit as admitting that MEBA was not a "labor organidation" and concludes that MEBA was bound by its admissions (R. 19). The affidavit as it appears in the record nowhere conceded that MEBA was not a labor organization; it simply described the supervisory functions of MEBA members. In any case the affidavit should not have been entitled to any weight since it was not taken in connection with the instant case.

The trial court might also have relied on admissions by MEBA in the instant case "that it could not secure collective bargaining rights for Interlake's licensed engineers through a N.L.R.B. election." (R. 19). This "admission" was an apparent reference to the *Globe* case, *infra*, at page 15, which did not involve the MEBA and whose inapplicability as an election case to a determination of a Section 8(b) question is discussed *infra* at pages 15, 16.

The points noted by Judge Friendly as indicating employee participation in the Second Circuit case apply with equal, if not greater, force to the instant case: (1) the national constitution was the same in both cases and (2) in at least two prior cases, the Second Circuit case and the one referred to therein, MEBA sought to represent non-supervisory engineers, tending to show that it encouraged employee participation. Finally, as a third point indicating some degree of employee participation in the affairs of MEBA, we cite the language of the trial judge that MEBA membership "is composed *primarily* and *almost* exclusively of supervisors" (Emphasis supplied) (R. 18). The difference between "almost exclusively" and "exclusively" might well be the difference between a "labor organization" and a "non-labor organization" in this kind of a case, as the Labor Board and the opinion of Judge Friendly demonstrated.[7]

For all these reasons it can reasonably be argued that MEBA is a "labor organization" within the meaning of Section 8(b) and that its conduct in the instant case falls within the prohibitions of Section 8(b)(2) and 8(b)(4)-(A) and (B). Consequently, this case is controlled by the doctrines of preemption announced in *Garner v. Teamsters Union, supra; Weber v. Anheuser-Busch, supra;* and *San Diego Council v. Garmon, supra.*

A second case in which MEBA has been held subject to the prohibitions of Section 8(b) of the Act was *Schauffler v. Local 101, MEBA*, 180 F. Supp. 932 (E. D. Pa. 1960). In this case Local 101 of the MEBA was held to be a "labor organization" for the purposes of a proceeding in which the Labor Board sought a temporary injunction

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[7] *Cf. NLRB v. Budd Mfg. Co.*, 169 F. 2d 571, 576 (6th Cir. 1948), *cert. den.* 335 U. S. 908 (1949), where a foremen's association which admitted to membership both foremen who were supervisors and employees who were not supervisors was held to be a "labor organization" within the meaning of Section 2(5) of the Act, since such Section does not require that the organization be composed exclusively of employees.

restraining the union from violating the secondary boycott provisions of Sections 8(b)(4)(i) and (ii)(B) of the Act, on the ground that the union was "an organization which participates in and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." (180 F. Supp. at 933.)

The District Court's concern with the organizational purposes of MEBA suggests another ground on the basis of which it may be reasonably argued that MEBA is a "labor organization" within the meaning of Section 8(b). According to this argument, if a union is obviously preoccupied with matters pertaining to the essence of the *employment* relationship, it ought to be classified as an employee-organization vis-a-vis the employer and hence as a "labor organization" within the meaning of the Act. Although individual members might well be considered supervisors with respect to their individual duties, when they band together to form an organization to deal with their employers concerning the crucial problems of the employment relationship—grievances, wages, hours and conditions—they collectively constitute a group of employees concerned with the classic problems of employees. As such, they constitute a "labor organization" just as much as any other union of employees.

In the instant case the MEBA was preoccupied with the concerns of the employment relationship. It called to the Pickands-Mathers engineers (in the language of its placards) "to join with organized labor to better working conditions" (R. 9-10, 30). These picket signs constituted an appeal from one group of organized employees to another group of unorganized employees to join with it in a fight against their common enemy—the nonunion employer who threatened the working conditions of all of them. If this kind of approach is taken to the instant situation, it leads to the conclusion that the MEBA is a "labor organization". At the very least, this would seem to be an approach which renders the picketing in question *reasonably* or *arguably*

subject to Section 8(b) of the Act within the meaning of *Weber v. Anheuser-Busch*, *supra*, and *San Diego Council v. Garmon*, *supra*.

Two cases have been cited heretofore in the course of this proceeding[8] as authority for holding that MEBA is not subject to the National Labor Relations Act. The first of these was a Board decision, *Globe Steamship Co. and Great Lakes Engineers Brotherhood*, 85 NLRB 475 (1949), in which the Board refused to conduct an election among marine engineers who performed supervisory duties to enable them to vote on membership in a union other than MEBA:

> ". . . we find that assistant engineers are supervisors as defined in the Act. We conclude, therefore, that no question affecting commerce exists concerning the representation of employees of the Employers, within the meaning of Section 9(c)(1) . . . of the Act." (85 NLRB at 481.)

The fact that it was a maritime union which would have been on the ballot was immaterial to the decision. Even if the United Steel Workers or the United Automobile Workers had petitioned for an election, the decision would have been the same, despite the fact that there has never been any question that these unions are subject to the provisions of the National Labor Relations Act. In other words, the *Globe* decision had nothing to say on whether the union involved (which was a maritime union other than MEBA) was a "labor organization" subject to the prohibitions of Section 8(b); it simply said that the Board would not lend its auspices, under Section 9 of the Act, to the conduct of an election among supervisors to determine their collective bargaining representative.

In any event, it has been suggested by Judge Friendly in *National MEBA v. NLRB*, *supra*, at 173, that when the

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[8] See Record, pp. 18-19 and Brief of Respondents in Opposition to Petition for Certiorari, pp. 20-21.

issue is whether an election must be held or who may vote in it, the supervisory identity of the employees sought to be organized or represented may justifiably be made the decisive factor. Judge Friendly pointed out that questions of election are affected by Section 14 of the Act, which states that no employer "shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining"—"a provision designed to change the result reached in *Packard Motor Car Co. v. NLRB*, 330 U. S. 485 (1947)"[9]—whereas when the issue is whether a union is a "labor organization" and, therefore, may be guilty of an unfair labor practice, the question arises "under different sections of the statute, with different wording and purpose." (274 F. 2d at 173.) In short, election cases are a law unto themselves, and their holdings cannot be carried over into the determination of whether a union is a "labor organization" under Section 8(b).[10]

Even so, the Board has not always refused to grant an election among marine engineers, even where the petitioning union was composed primarily of supervisors. In *Graham Transportation Co. and Brotherhood of Marine*

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[9] In this case it was held that foremen were entitled to the rights of self-organization, collective bargaining and the other concerted activities assured to employees generally, and that the Company had to bargain with them.

[10] Neither the trial court nor the Supreme Court of Minnesota understood this distinction. The trial court was impressed by the fact that MEBA had conceded in the instant case "that it could not secure collective bargaining rights for Interlake's licensed engineers through an N.L.R.B. election". The trial court concluded from this that MEBA's "activities which plaintiffs seek to enjoin are, therefore, completely excluded from the Act and from the Board's jurisdiction, and the State court jurisdiction remains unimpaired." (R. 19). The Supreme Court of Minnesota concluded that it had jurisdiction to enjoin an unfair labor practice "when Congress expressly excluded supervisory employees from the Federal Act and left it clearly up to management to determine whether it would recognize and deal with the union as a bargaining agent for such employees. . . ." (R. 51).

Engineers, 124 NLRB 960 (1959), the Board directed an election, finding that none of the employer's engineers were supervisory employees and, therefore, that the union therein involved was seeking to represent individuals who were "employees" within the meaning of Section 2(3) of the Act. It is not a requirement of the Act, said the Board, that a "labor organization" be comprised exclusively of "employees".

The other case, which has been put forth as holding that "MEBA is not a labor organization within the meaning of the N.L.R.A. and that the Federal courts have no jurisdiction over it . . ." (R. 18), was *Bull Steamship Co. v. National MEBA*, 250 F. 2d 332 (2d Cir. 1957). But this case did not so hold. Bull Steamship Co. brought suit against MEBA for an injunction and for damages for alleged breach of a collective bargaining agreement under Section 301(a) of the Labor Management Relations Act of 1947.[11] The trial court issued an extensive preliminary injunction restraining a strike then in progress, from which the union appealed.

The Court of Appeals reversed and dismissed the injunction order on the ground the District Court lacked jurisdiction under Section 301(a), since the collective bargaining agreement for breach of which the suit was initiated covered only "supervisors". Judge Clark stated:

> "The substantial question thus resolves itself into one of fact: Are the members of MEBA covered by the collective bargaining contract with Bull 'supervisors' within the definition of the Act? If they are 'supervisors' then MEBA is not a 'labor organization representing employees' for the purposes of this action. This result follows even if some members of MEBA outside of this bargaining unit are 'employees'.

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[11] Sec. 301(a): "Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

> ". . . Here . . . it appears likely that the Court below has no jurisdiction under §301 of the Taft Hartley Act, 29 USC §185 for the supervisory status of the MEBA employees of Bull is well established in the pleadings, affidavits and briefs below." (250 F. 2d at 336, 338.)

In effect, the issue in such case was whether the specific collective bargaining agreement covered "employees" so as to bring it within Section 301(a). The decision in no way determined what constituted a "labor organization" for the purpose of Section 8(b) of the Act.

We respectfully submit that on the basis of the applicable cases, sufficient Labor Board and federal court authority has been shown to establish that MEBA is "reasonably within" or at least "arguably subject to" Section 8(b) of the Act. Under the doctrine of preemption laid down by this Court, this should suffice to divest the state courts of jurisdiction over the instant case in order to permit the National Labor Relations Board to adjudicate in a proper proceeding brought before it.

The theme which runs through all of this Court's decisions on the subject of preemption is its concern for the legislative purpose of establishing a uniform national policy in the handling of disputes in the labor-management field. The exclusive instrument established by Congress to carry out such policy is the National Labor Relations Board. In the instant case the Minnesota Supreme Court has participated in the formulation of a legal determination in this field by finding that MEBA is not a "labor organization" within the meaning of the Act. Its decision raises the distinct possibility of conflict between its holding and the holding of the National Labor Relations Board. Thus, we have here an intolerable situation: a state court has reached one conclusion and the Board may reach, and indeed has reached, the opposite conclusion in an area as to which this Court has said uniformity is essential.[12]

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[12] *Cf. Incres Steamship Company v. International Maritime Workers Union*, 10 N. Y. 2d 218 (Ct. of App. 1961), cert. granted, U. S. (Oct. Term 1961, No. 469).

The state court has in effect held that in this case MEBA is not a "labor organization" within the meaning of the federal act. This holding squarely conflicts with the result reached by the Labor Board and by the Court of Appeals for the Second Circuit. The elimination of such a dichotomy and the avoidance of a conflict of remedies is part of the rationale behind *Garner*, *Weber* and *Garmon*. The only way uniformity of treatment can be assured in this area is for this Court to invoke the doctrine that the jurisdiction of the state court has been preempted in favor of the exclusive jurisdiction of the National Labor Relations Board.

Conclusion

The doctrine of preemption laid down by this Court in *Garner v. Teamsters Union*, *supra*; *Weber v. Anheuser-Busch*, *supra*; and *San Diego Council v. Garmon*, *supra*, is obviously not in dispute in this case. Nor do we understand that there is any dispute that the activity of MEBA in the instant case would, if committed by an unquestionable "labor organization", be deemed reasonably to fall within Section 8(b) of the Act and under the exclusive jurisdiction of the National Labor Relations Board.

What is in dispute is whether the doctrine of preemption applies in the instant case because of the contested status of MEBA as a "labor organization". Under the rule enumerated by this Court in *Weber v. Anheuser-Busch*, *supra*, at 481:

> Even if an unfair labor practice is not clearly involved in peaceful picketing, ". . . where the facts reasonably bring the controversy within the sections prohibiting these practices, . . . the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance.";

and as reinforced in *San Diego Council v. Garmon*, *supra*, at 245:

> "When an activity is arguably subject to . . . Section 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted;",

we submit that the doctrine of preemption does apply here.

The issue before this Court is not whether the state courts made a correct determination on the status of MEBA as a "labor organization". The narrow question is whether MEBA is "arguably subject to" or "reasonably within" the provisions of Section 8(b) of the Act. If answered in the affirmative, the subject matter rests in the exclusive jurisdiction of the National Labor Relations Board, and the Minnesota state courts, in presuming to determine the question, usurped the function reserved to the Board by Congress.

We submit the facts in the case and the prevailing applicable decisions of the National Labor Relations Board and the federal courts amply justify the invocation of the doctrine of preemption to permit the Labor Board to exercise its proper jurisdiction. We are, therefore, asking this Court to reverse the judgment of the Supreme Court of Minnesota on the ground that it was entered without jurisdiction and to order the proceeding in the state court to be dismissed for lack of jurisdiction.

Respectfully submitted,

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Appendix

Statutory Provisions Involved

Following are the pertinent provisions of the National Labor Relations Act, as amended:[13]

"Sec. 2. When used in this Act—

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, . . . but shall not include . . . any individual employed as a supervisor. . . .

"(5) The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

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[13] The changes incorporated by the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, have not been included here, because the 1959 amendments became effective after the occurrence of the operative events of the instant case. In any case, the 1959 amendments would not have affected the decision in this case in any particular.

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

"Sec. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) . . .

(4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees.

. . .

"Sec. 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining."